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**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-23 are pending.

**Amendment to the Claims**

Claims 1-23 have been examined, and the Examiner has indicated that Claims 1-6 and 22 are allowed. Applicants have amended Claims 15 and 23 to include the limitation of the discrete components comprising at least one of the group consisting of elastic ribbons, elastic strips, absorbent pads, containment flaps, stretchable layers, adhesive patterns, and graphics. Support for this amendment is provided at page 4, lines 7-11, for example.

No new matter has been added by this Amendment. No additional fee is required because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

**Claim Rejections - 35 U.S.C. §102**

The rejection of Claim 23 under 35 U.S.C. §102(b) as being anticipated by Instance (U.S. Patent 5,674,334) is respectfully traversed.

Instance discloses a method and apparatus for producing self-adhesive labels. For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Instance does not disclose apparatus used in the manufacture of an absorbent article, as recited in Applicants' Claim 23. More particularly, Instance does not disclose a device for conveying a continuously moving layer of such discrete components as elastic ribbons, elastic strips, absorbent pads, containment flaps, stretchable layers, adhesive patterns, and/or graphics. Instead, Instance discloses apparatus for applying folded labels to a backing web of release material.

The Examiner cites *Ex parte Thibault*, which states "Expressions relating the apparatus to contents thereof during an intended operation are of no

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significance in determining patentability of the apparatus claim." In *Ex parte Thibault*, the Appellant's application was directed to a method and apparatus for making stable monomeric formaldehyde, and the cited reference was directed to distillation and fractional condensation of formaldehyde. Thus, both inventions were directed to processing formaldehyde. In contrast, Applicants' Claim 23 is directed to apparatus used in the manufacture of an absorbent article, whereas Instance is directed to apparatus for applying folded labels to a backing web of release material. The applications of Applicants' apparatus and Instance's apparatus are completely unrelated, and the materials used in conjunction with the respective apparatuses are so different from one another that the use of the apparatus in Instance would not be obvious to a person skilled in the art of manufacturing absorbent articles. Furthermore, as indicated in *Ex parte Leonard*, 187 USPQ 122 (Bd. App. 1974), the materials on which a process is carried out must be accorded weight in determining the patentability of a process.

For at least the reasons presented above, Applicants respectfully submit that Claim 23 is not anticipated by Instance. Thus, Applicants respectfully request withdrawal of this rejection.

### Claim Rejections - 35 U.S.C. §103

#### A. Brandon et al. in view of Instance

The rejection of Claims 7 and 13 under 35 U.S.C. §103(a) as being unpatentable over Brandon et al. (U.S. Patent 5,818,719, hereinafter "Brandon") in view of Instance is respectfully traversed.

Brandon discloses a process and apparatus for controlling the registration of two layers of material, as in the manufacture of absorbent articles. Brandon does not disclose or suggest the use of reference marks on a first layer (54) to synchronize the feed rate of discrete components onto the first layer. Instead, Brandon uses a proximity switch for monitoring and controlling the placement of the discrete components in relation to reference marks on a second continuous layer (66). More particularly, the two continuously moving layers are controllably registered by adjusting the position of the layer having reference marks (66) to correspond to the

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sensed location of the discrete components. This methodology is contrary to the teachings of Instance.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Absent impermissible hindsight, there is no suggestion or motivation to combine the teachings of Brandon and Instance.

The processes in these two references are completely unrelated to one another, with Instance directed to a process of applying folded labels to a release backing and Brandon directed to a process of assembling absorbent articles. Furthermore, Brandon adjusts the position of the layer having reference marks thereon, whereas Instance adjusts the position of the labels rather than the layer on which the reference marks are located. The Examiner suggests that it would have been obvious to add additional means of control to the process in Brandon by adding reference marks to the first layer as shown in Instance. However, there is no motivation to combine these two unrelated references, and even if the two references were combined, there is no suggestion to adjust the layer of discrete components instead of adjusting the continuous layer in Brandon because such a substitution would be repugnant to the inventive concept of Brandon.

Additionally, the processes of Brandon and Instance possess different types of materials and different types of bonding. For example, the materials used in the Brandon process may be stretchable, whereas the labels and release paper in Instance are typically not stretchable. Moreover, the components in Brandon are permanently bonded to one another, whereas the components in Instance are releasably bonded to one another. Thus, it is unlikely that a person skilled in the art would consider combining two methods directed to two completely different applications.

For at least the reasons given above, Applicants respectfully submit that the invention of Brandon in view of Instance fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

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**B. Brandon et al. in view of Instance and further in view of Weyenberg**

The rejection of Claims 8 and 10-12 under 35 U.S.C. §103(a) as being unpatentable over Brandon in view of Instance as applied to Claim 7 above, and further in view of Weyenberg (U.S. Patent 5,359,525) is respectfully traversed.

As explained above, Brandon discloses a process and apparatus in which two continuously moving layers are controllably registered by adjusting the position of the layer having reference marks to correspond to the sensed location of the discrete components. This methodology is contrary to the teachings of Instance, wherein the position of the labels is adjusted to correspond to the reference marks on the continuous layer. Weyenberg discloses a completely different type of registration process than either Brandon or Instance.

Weyenberg discloses a method and apparatus for registration control of assembled components, such as in the production of absorbent articles. The method and apparatus are designed to measure the relative positions of components of a composite article in the transverse direction or in both the machine direction and the transverse direction for use in a feedback control in order to adjust the operation of the respective component supply means in subsequent operations.

The Examiner suggests that the combined failure of Brandon and Instance to disclose or suggest the step of determining the actual position of the components relative to the marks and correcting a setpoint of placement control for the components can be overcome by combining the teachings of Brandon and Instance with the teachings of Weyenberg.

As explained above, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings in order to establish a prima facie case of obviousness.

Absent impermissible hindsight, there is no suggestion or motivation to combine the teachings of Brandon, Instance, and Weyenberg. The processes in Brandon and Weyenberg are completely unrelated to the processes in Instance, with Instance directed to a process of applying folded labels to a release backing and Brandon and Weyenberg directed to processes of assembling absorbent articles.

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These processes possess different types of materials and different types of bonding. For example, the materials used in the Brandon and Weyenberg processes may be stretchable, whereas the labels and release paper in Instance are typically not stretchable. Furthermore, Instance and Weyenberg each disclose a comprehensive quality control process, thus a cumulative combination of the two references is unlikely. Additionally, the components in Brandon and Weyenberg are permanently bonded to one another, whereas the components in Instance are releasably bonded to one another. Thus, it is unlikely that a person skilled in the art would consider combining Instance with either Brandon or Weyenberg.

For at least the reasons given above, Applicants respectfully submit that the invention of Brandon in view of Instance and further in view of Weyenberg fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**C. Brandon et al. in view of Instance and further in view of Popp et al.**

The rejection of Claim 9 under 35 U.S.C. §103(a) as being unpatentable over Brandon in view of Instance as applied to Claim 7 above, and further in view of Popp et al. (U.S. Patent 5,932,039, hereinafter "Popp") is respectfully traversed.

As explained above, Brandon fails to disclose or suggest the use of reference marks on a continuously moving first layer to synchronize the feed rate of discrete components onto the first layer. As also explained above, Instance fails to disclose or suggest a method or apparatus used in the manufacture of absorbent articles. Furthermore, Instance fails to disclose or suggest a method or apparatus involving any discrete components that comprise components of an absorbent article, or any discrete components bonded onto a continuously moving layer, thereby forming an absorbent article assembly. Additionally, with respect to Applicants' Claim 9, both Brandon and Instance fail to disclose or suggest a filtering step.

The Examiner suggests that the failure of the combination of Brandon and Instance to disclose or suggest a filtering step can be overcome by combining the teachings of Brandon and Instance with the teachings of Popp.

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Absent impermissible hindsight, there is no suggestion or motivation to combine the teachings of Instance with either Brandon or Popp. The process in Instance is completely unrelated to the processes in either Brandon or Popp, with Instance directed to a process of applying folded labels to a release backing in contrast to Brandon and Popp, which are both directed to processes of assembling absorbent articles. These processes possess different types of materials and different types of bonding. For example, the materials used in the Brandon and Popp processes may be stretchable, whereas the labels and release paper in Instance are typically not stretchable. Additionally, the components in Brandon and Popp are permanently bonded to one another, whereas the components in Instance are releasably bonded to one another. Thus, it is unlikely that a person skilled in the art would consider combining methods directed to completely different applications.

For at least the reasons given above, Applicants respectfully submit that the invention of Brandon in view of Instance and further in view of Popp fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**D. Brandon et al. in view of Instance**

The rejection of Claim 14 under 35 U.S.C. §103(a) as being unpatentable over Brandon in view of Instance as applied to Claim 7 above is respectfully traversed.

As explained above, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings in order to establish a prima facie case of obviousness.

Absent impermissible hindsight, there is no suggestion or motivation to combine the teachings of Brandon and Instance. The processes in these two references are completely unrelated, with Instance directed to a process of applying folded labels to a release backing and Brandon directed to a process of assembling absorbent articles. Furthermore, Brandon adjusts the position of the layer having reference marks thereon, whereas Instance adjusts the position of the labels rather than the layer on which the reference marks are located. Additionally, these two

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processes possess different types of materials and different types of bonding. For example, the materials used in the Brandon process may be stretchable, whereas the labels and release paper in Instance are typically not stretchable. Moreover, the components in Brandon are permanently bonded to one another, whereas the components in Instance are releasably bonded to one another. Thus, it is unlikely that a person skilled in the art would consider combining two methods directed to two completely different applications.

Another criterion for establishing a prima facie case of obviousness is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. With respect to Applicants' Claim 14, both Brandon and Instance fail to disclose or suggest a method or apparatus having the flexibility to replace the continuously moving layer with another continuously moving layer having reference marks spaced apart at a different distance than on the original layer. Instance discloses flexibility in the folding aspect of the process therein, such that the labels can have a variety of different folded configurations. However, neither Brandon nor Instance discloses or suggests interchangeability of continuously moving webs that differ in terms of distances between reference marks.

The Examiner suggests that it would have been obvious to have the registration material on the web be different with different spacing as could be desired by the artisan. However, absent impermissible hindsight, there is no suggestion or motivation in either Brandon or Instance to provide the process and apparatus therein with the flexibility to change continuously moving webs. Thus, it is unlikely that a person skilled in the art would consider modifying the process and apparatus of Brandon and/or Instance to accommodate the manufacture of absorbent articles of different sizes or of different configurations, for example.

For at least the reasons given above, Applicants respectfully submit that the invention of Brandon in view of Instance fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

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**E. Brandon et al. in view of Instance and Weyenberg**

The rejection of Claims 15, 16, and 18-21 under 35 U.S.C. §103(a) as being unpatentable over Brandon in view of Instance and Weyenberg is respectfully traversed.

As explained above, Brandon discloses a process and apparatus in which two continuously moving layers are controllably registered by adjusting the position of the layer having reference marks to correspond to the sensed location of the discrete components. This methodology is contrary to the teachings of Instance, wherein the position of the labels is adjusted to correspond to the reference marks on the continuous layer. Weyenberg discloses a completely different type of registration process than either Brandon or Instance.

The Examiner suggests that the combined failure of Brandon and Instance to disclose or suggest the corrective step wherein the placement of components is corrected subsequent to superimposing the components on the first layer can be overcome by combining the teachings of Brandon and Instance with the teachings of Weyenberg.

As noted above, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings in order to establish a prima facie case of obviousness.

Absent impermissible hindsight, there is no suggestion or motivation to combine the teachings of Brandon, Instance, and Weyenberg. The processes in Brandon and Weyenberg are completely unrelated to the process in Instance, with Instance directed to a process of applying folded labels to a release backing and Brandon and Weyenberg directed to processes of assembling absorbent articles. These processes possess different types of materials and different types of bonding. For example, the materials used in the Brandon and Weyenberg processes may be stretchable, whereas the labels and release paper in Instance are typically not stretchable. Furthermore, Instance and Weyenberg each disclose a comprehensive quality control process, thus a cumulative combination of the two references is unlikely. Additionally, the components in Brandon and Weyenberg are permanently



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bonded to one another, whereas the components in Instance are releasably bonded to one another. Thus, it is unlikely that a person skilled in the art would consider combining Instance with either Brandon or Weyenberg.

For at least the reasons given above, Applicants respectfully submit that the invention of Brandon in view of Instance and Weyenberg fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**F. Brandon in view of Instance and Weyenberg and further in view of Popp**

The rejection of Claim 17 under 35 U.S.C. §103(a) as being unpatentable over Brandon in view of Instance and Weyenberg as applied to Claim 15 above, and further in view of Popp, is respectfully traversed.

Brandon discloses a process and apparatus in which two continuously moving layers are controllably registered by adjusting the position of the layer having reference marks to correspond to the sensed location of the discrete components. This methodology is contrary to the teachings of Instance, wherein the position of the labels is adjusted to correspond to the reference marks on the continuous layer. Weyenberg discloses a completely different type of registration process than either Brandon or Instance. With respect to Applicants' Claim 17, Brandon, Instance, and Weyenberg, alone as well as in combination, fail to disclose or suggest a device for filtering out signal anomalies.

The Examiner suggests that the failure of the combination of Brandon, Instance, and Weyenberg to disclose or suggest a device for filtering out signal anomalies can be overcome by combining the teachings of Brandon, Instance, and Weyenberg with the teachings of Popp.

Absent impermissible hindsight, there is no suggestion or motivation to combine the teachings of Instance with either Brandon, Weyenberg, or Popp. The process in Instance is completely unrelated to the processes in either Brandon, Weyenberg, or Popp, with Instance directed to a process of applying folded labels to a release backing in contrast to Brandon, Weyenberg, and Popp, which are each directed to processes of assembling absorbent articles. These processes possess different types of materials and different types of bonding. For example, the materials

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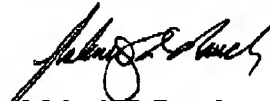
used in the Brandon, Weyenberg, and Popp processes may be stretchable, whereas the labels and release paper in Instance are typically not stretchable. Additionally, the components in Brandon, Weyenberg, and Popp are permanently bonded to one another, whereas the components in Instance are releasably bonded to one another. Thus, it is unlikely that a person skilled in the art would consider combining Instance with Brandon, Weyenberg, or Popp.

For at least the reasons given above, Applicants respectfully submit that the invention of Brandon in view of Instance and Weyenberg and further in view of Popp fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

#### Conclusion

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,



Melanie I. Rauch  
Registration No. 40,924

Pauley Petersen & Erickson  
2800 West Higgins Road, Suite 365  
Hoffman Estates, Illinois 60195  
(847) 490-1400  
FAX (847) 490-1403